

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
14 DHC 26

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

BOBBY D. MILLS, Attorney,

Defendant

AMENDED  
COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Bobby D. Mills ("Mills"), was admitted to the North Carolina State Bar in 1985, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Mills was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. During the relevant periods referred to herein, Mills was an attorney with the law firm of Herring Mills & Kratt, PLLC ("the firm").

5. The firm's practice includes providing representation in adoption matters.

6. A Child's Hope, LLC ("ACH") is a licensed North Carolina private child placement agency.

7. At the time of the events alleged in this complaint, Mills had an ownership interest in ACH, ACH rented an office in the firm's office suite, and Mills participated in the management of operations of ACH.

8. Prospective adoptive parents who utilize ACH to try to adopt a child are informed of Mills' ownership interest in the firm and in ACH and are informed of their right to counsel of their choice. Prospective adoptive parents indicate in writing whether they choose to retain the firm or outside counsel of their choice.

9. A certain set of prospective parents, who shall be referred to as "the Ns," retained the firm to represent them in pursuing adoption of a child placed with ACH for adoption. The child shall be referred to as "K."

10. On or about January 20, 2010, the firm filed a Petition for Adoption of K on behalf of the Ns.

11. Because K's birth mother indicated to ACH that she did not know K's father's identity, last name, or address, there were two components to Mills's representation of the N's in the adoption case: (i) a termination proceeding that sought to terminate the parental rights of K's biological father and (ii) the adoption proceeding.

12. Mills handled all aspects of the representation that related to the adoption proceeding.

13. Mills assigned an associate of the firm, DH, to handle the part of the representation that related to the termination proceeding.

14. Mills was DH's supervising attorney for her work related to the termination proceeding.

15. On March 22, 2010, DH filed a petition for termination of parental rights.

16. The termination petition stated that the identity and location of K's father was not known and could not be discovered with reasonable diligence.

17. On March 25, 2010, DH filed a motion to provide service by publication in the termination action based upon the firm's representation to the court that the identity and location of K's father was not known and could not be discovered with reasonable diligence.

18. The court granted the motion for service by publication and the firm proceeded with publishing notice in the termination action. Notice was published on April 7, April 14, and April 21, 2010.

19. On or about April 15, 2010, Mills became aware that J had contacted ACH and stated that he was K's biological father.

20. On or about April 21, 2010, K's mother confirmed to ACH that J was K's father.

21. Mills gave J notice of the adoption proceeding.

22. Mills did not give J notice of the termination proceeding.

23. Mills did not instruct DH to give J notice of the termination proceeding.

24. On May 11, 2010, after the three dates of notice publication were concluded for service in the termination proceeding, the firm filed an affidavit of service executed by a firm paralegal in the termination case.

25. The affidavit of service stated that the identity of any possible father was not known and could not be known with the exercise of due diligence.

26. The statement in the affidavit of service that the identity of any possible father was not known was not accurate when made in May 2010.

27. There was no indication in the affidavit of service that J was excluded from this description or was intended to be excluded from any resulting termination order.

28. The court held a hearing on ACH's petition for termination of parental rights on or about May 26, 2010.

29. Neither Mills nor DH gave J notice of the hearing on ACH's petition for termination of parental rights.

30. J did not participate in the hearing on ACH's petition for termination of parental rights.

31. Mills failed to ensure DH corrected the prior representation made to the court that the firm lacked knowledge of the identity and location of K's father.

32. Mills failed to ensure that the documentation and information presented to the court by DH and the firm's paralegal in the termination proceeding after J contacted ACH was accurate, excluding J from the broad categories of any possible father or parent.

33. On May 26, 2010 the court entered an order that terminated the parental rights of "Respondents, Calvin or Kevin or Any Unknown or Possible Parent" with no exclusion of J from the category of "possible parent" or any other indication that the order did not apply to J.

34. Despite choosing to give notice to J only of the adoption proceeding and not of the termination proceeding, Mills subsequently attempted to have the termination of parental rights order applied to J.

35. On November 8, 2010, Mills instructed another associate attorney, DB, to file a motion for an order finding J's consent was not required for the adoption, with one of the bases being that J's parental rights had been terminated by the order in the termination proceeding.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

(a) By failing to ensure that the pleadings and other filings DH and the firm's paralegal submitted to the court in the termination proceeding contained accurate information and excluded J, Mills engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d), failed to make reasonable efforts to ensure that the conduct of his subordinate attorney conformed to the Rules of Professional Conduct in violation of Rules 5.1(b), and failed to make reasonable efforts to ensure that the conduct of his nonlawyer assistant was compatible with the professional obligations of a lawyer in violation of Rule 5.3(b); and

(b) By failing to give J notice of the termination proceedings and then attempting to apply the order from the termination proceedings to J in the adoption proceedings, Mills engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c), engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) and is responsible for having a subordinate lawyer file the Motion for Consent Not Necessary which attempted to apply the termination order to J in violation of Rule 5.1(c)(1).

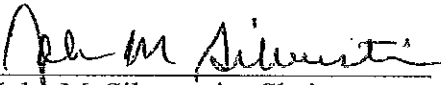
WHEREFORE, Plaintiff prays that:

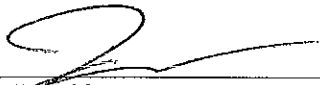
(1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;

(2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

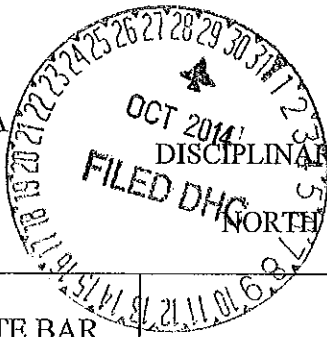
This the 29<sup>th</sup> day of October, 2014.

  
John M. Silverstein, Chair  
Grievance Committee

  
Jennifer A. Porter  
Deputy Counsel  
State Bar No. 30016  
The North Carolina State Bar  
P.O. Box 25908  
Raleigh, NC 27611  
919-828-4620  
Attorney for the Plaintiff

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CERTIFICATE OF SERVICE

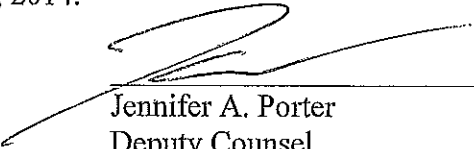
CERTIFICATE OF SERVICE

This is to certify that the Amended Complaint filed on October 29, 2014 was served on Defendant by depositing it on October 29, 2014 in the United States Mail, postage prepaid, addressed to Defendant's attorney as follows:

David S. Coats  
Bailey & Dixon, LLP  
P.O. Box 1351  
Raleigh, NC 27602

This Certificate of Service is hereby served upon Defendant by depositing it on this date in the United States Mail, postage prepaid, addressed to Defendant's attorney at the address listed above.

This the 29<sup>th</sup> day of October, 2014.



\_\_\_\_\_  
Jennifer A. Porter  
Deputy Counsel  
The North Carolina State Bar  
P.O. Box 25908  
Raleigh, NC 27611  
919-828-4620  
Counsel for Plaintiff